IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

PEDRO GÓMEZ, FE JOSEFINA MORALES, the conjugal partnership formed between them, and EMMA GÓMEZ DE PÉREZ,

Plaintiffs,

v.

UBS FINANCIAL SERVICES INC. and UBS FINANCIAL SERVICES INCORPORATED OF PUERTO RICO,

Defendants.

Civ. No. 16-01040 (CCC)

RESPONDENTS' RENEWED (1) OPPOSITION TO PETITIONERS' REQUEST FOR REVERSAL OR MODIFICATION OF FINAL ARBITRATION AWARD AND (2) CROSS-MOTION TO CONFIRM ARBITRATION AWARD

TO THE HONORABLE COURT:

Respondents UBS Financial Services Inc. and UBS Financial Services Incorporated of Puerto Rico (collectively, "UBS") respectfully request that the Court deny Petitioners' Request for Revocation or Modification of Arbitration Award, Dkt. No. 1-1, and grant UBS's Cross-Motion to Confirm Arbitration Award, Dkt. No. 14, pursuant to the Federal Arbitration Act, 9 U.S.C. § 9 ("FAA"), and state:

1. On October 8, 2015, a unanimous panel of three FINRA arbitrators issued the arbitral award at issue (the "Final Award"), culminating nearly two years of proceedings. *See* Dkt. No. 14-4 (Ex. D, Final Award).

2. The Final Award issued after an evidentiary hearing held over 17 days that included live testimony from 17 witnesses and submission of over 240 exhibits, and which now encompasses more than 4,000 transcript pages. *See* Dkt. No. 14 ("Cross-Mot." or "Cross-

Motion") at 1-2; *see also* Dkt. No. 14-1 (Ex. A, Excerpted Transcript of Arbitration Proceedings – September 9, 2015). The hearing was conducted by a knowledgeable arbitration panel (the "Panel") made up of experienced commercial lawyers and chaired by a retired state-court judge. *See* Cross-Mot. at 3-5; *see also* Dkt. Nos. 14-5 (Ex. E, Lazor Disclosures); 14-6 (Ex. F, Murphy Disclosures); 14-7 (Ex. G, Eichhorn Disclosures).

3. The evidentiary hearing provided the Petitioners a full opportunity to present all claims they wished to advance. While Petitioners argued, among other things, that their investments in UBS Puerto Rico closed-end funds ("CEFs") were unsuitable, UBS argued that those investments had performed extremely well for many years, amassing considerable wealth for the Claimants. *See* Cross-Mot. 4; *see also* Dkt. Nos. 14-9 (Ex. I, Gomez/Morales CEF Annual Income Summary), 14-10 (Ex. J, Gómez de Pérez CEF Annual Income Summary), 14-11 (Ex. K, Torres Monthly Account Balance Chart); 14-12 (Ex. L, Letter and Statement re: Inheritance). UBS also argued that Petitioners—successful businesspeople and attorneys—understood the features and risks of their investments. *See* Cross-Mot. 5-6; *see also* Dkt. Nos. 14-13 (Ex. M, Excerpted Transcript of Arbitration Proceeding – July 2, 2015); 14-14 (Ex. N, Excerpted Transcript of Arbitration Proceeding – September 8, 2015); 14-15 (Ex. O, General Trading Authorization for Security Accounts); 14-16 (Ex. P, Excerpted Transcript of Arbitration Proceedings – July 2, 2016); 14-17 (Ex. Q, Morales CV); 14-18 (Ex. R, Excerpted Transcript of Arbitration Proceedings – July 3, 2015); 14-19 (Ex. S, Torres Case Summary Report). While Petitioners presented arguments that the losses in their accounts was attributable to the alleged failures of UBS, UBS argued that those losses came after more than 14 years of sustained profits, and were caused largely by market downturns. *See* Cross-Mot. 6; *see also* Dkt. No. 14-20 (Ex. T, Excerpted Transcript of Arbitration Proceeding – September 9, 2015).

4. Lastly, among other things, Petitioners argued that they should be relieved of any obligations to repay loan amounts, asserting two principal arguments in support of that position, both of which UBS argued were meritless. First, Petitioners were simply wrong that Puerto Rico law required the lender, UBS Bank USA, to be separately licensed in Puerto Rico. *See* Cross-Mot. 9-11. Second, Petitioners were equally incorrect that accounts holding the CEFs could not be pledged as collateral to a non-Puerto Rico entity. *See id.* at 11-12. More fundamentally, however, UBS argued that Petitioners' arguments rested on the inequitable and illogical premise that mere technical rule violations with no connection to Petitioners' losses would entitle them to keep money they had borrowed and subsequently repaid, *i.e.*, to force UBS to repay loan proceeds that Petitioners had chosen to withdraw—an enormous windfall for Petitioners. *See id.* at 8-9, 12. UBS also argued that Petitioners had extensive experience using credit and made an informed decision in June 2010 to assume inherited loans to maximize their income rather than pay them off to reduce their debt (a decision that made them a profit of over half a million dollars in 2011-12). *See* Cross-Mot. 7-8; *see also* Dkt. Nos. 14-21 (Ex. U, Excerpted Transcript of Arbitration Proceedings – September 7, 2015); 14-22 (Ex. V, Excerpted Transcript of Arbitration Proceedings – July 3, 2015); 14-23 (Ex. W, U1 Form); 14-24 (Ex. X, Credit Line Increase Confirmations); 14-25 (Ex. Y, Gómez de Pérez Credit Line Agreement).

5. Taking these various arguments, positions, and evidence into consideration, the Panel awarded Petitioners $85,625.98 in damages. *See* Dkt. No. 14-4 (Ex. D, Final Award) at 6. The Panel also denied UBS's counterclaim pertaining to Petitioners' unpaid loan balance in the amount of $238,617. *See id.* But the Panel denied Petitioners' request for "an order from the Panel declaring null and void ab initio any and all loans made" to Petitioners. *See id.* at 6 ("Any and all relief not specifically addressed herein . . . is denied."). Petitioners had argued,

illogically, that they were entitled to keep all the money they borrowed—even where the money was used to finance personal expenses, outside debts, and their comfortable lifestyle—and thus that they should never have been required to pay back any of their loans. *See* Dkt. No. 14-2 (Ex. B, Statement of Claim, ¶¶ 4.6, 5.5, 6.4). The Panel rejected this claim, correctly and unsurprisingly. *See* Dkt. No. 14-4 (Ex. D, Final Award) at 6.

6. On December 29, 2015, Petitioners moved to vacate the Final Award in the Puerto Rico Court of First Instance, San Juan Superior Part. *See* Dkt. No. 1-1 (Request for Revocation or Modification of Arbitration Award); Dkt. No. 6-1 (Translated Request for Revocation or Modification of Arbitration Award). The thrust of Petitioners' argument is that the Panel's denial of UBS's counterclaim seeking repayment of about $238,000 of unpaid loan balances somehow entitles Petitioners to receive all the loan amounts they previously borrowed and repaid, and that this denial somehow also constitutes grounds for vacatur. *See, e.g.*, *id.* ¶¶ 3.3, 7.1-7.9.

7. On January 8, 2016, UBS removed to this Court. *See* Dkt. No. 1. On February 25, 2016, Petitioners moved to remand. *See* Dkt. No. 9. On March 7, 2016, UBS opposed the motion to remand. *See* Dkt. No. 13. Petitioners filed a reply in further support of their motion to remand on March 23, 2016. *See* Dkt. No. 18.

8. On March 7, 2016, UBS cross-moved to confirm the Final Award and opposed Petitioners' motion for vacatur or modification, explaining why Petitioners' objections to the Final Award were both wrong as a matter of law and insufficient grounds to vacate in any event. *See* Dkt. No. 14 (Cross-Mot.).

9. On September 8, 2016, the Court denied Petitioners' motion to remand, *see* Dkt. No. 21, and entered a scheduling order that granted the parties until April 18, 2017, to conduct

discovery and until May 18, 2017, to make dispositive motions, *see* Dkt. No. 22 at 4.

10. The discovery period has now passed, and Petitioners have propounded no discovery requests on UBS.

11. The matter is therefore ripe for adjudication. Motions to confirm, modify, or vacate arbitration awards pursuant to 9 U.S.C. §§ 9-11 "shall be made and heard in the manner provided by law for the making and hearing of motions." 9 U.S.C. § 6; *see also Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 582 (2008) ("An application for any of these orders [under the FAA] will get streamlined treatment as a motion."); *UBS Fin. Servs. Inc. v. Asociación de Empleados del Estado Libre Asociado de P.R.*, No. 16-02017, 2017 WL 1162952, at *2 (D.P.R. Mar. 28, 2017) ("[The FAA] instruct[s] that an application to the Court should resemble a motion, complete with an argument and supporting evidence."). All arguments and supporting evidence are currently before the Court. *See* Dkt. No. 1-1 (Request for Revocation or Modification of Arbitration Award); Dkt. No. 14 (Cross-Mot.).

12. UBS therefore respectfully moves the Court to deny Petitioners' Request for Revocation or Modification of Arbitration Award and to confirm the Final Award pursuant to 9 U.S.C. § 9 for the reasons set forth in UBS's Cross-Motion, Dkt. No. 14, and the supporting evidence filed with it. "[E]valuation of an arbitrator's ruling is extremely narrow and exceedingly deferential." *Raymond James Fin. Servs., Inc. v. Fenyk*, 780 F.3d 59, 63-64 (1st Cir. 2015) (internal quotation marks omitted). The FAA "provides only a narrow set of statutory grounds for a federal court to vacate an [arbitration] award," *Bangor Gas Co. v. H.Q. Energy Servs. (U.S.) Inc.*, 695 F.3d 181, 187 (1st Cir. 2012), and Petitioners have not moved to vacate on or offered evidence of any of those grounds. Instead, Petitioners move to vacate based solely on an imagined legal error. No legal error exists, *see* Cross-Mot. 16-19, but even if it did, this is not

a valid basis to disturb an arbitration award, *see, e.g.*, *Cytyc Corp. v. DEKA Prods. Ltd. P'ship*, 439 F.3d 27, 32 (1st Cir. 2006) ("That a reviewing court is convinced that the arbitrators committed error—even serious error—does not justify setting aside the arbitral decision."); *Advest, Inc. v. McCarthy*, 914 F.2d 6, 8 (1st Cir. 1990) ("Even where . . . error is painfully clear, courts are not authorized to reconsider the merits of arbitration awards[.]" (internal quotation marks omitted)); *Colón Vázquez v. El San Juan Hotel & Casino*, 483 F. Supp. 2d 147, 151-52 (D.P.R. 2007) ("Even if the court is convinced that the arbitrator committed serious error, so long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, arbitration awards must be confirmed." (internal quotation marks and citation omitted)); *see also, e.g.*, *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 38 (1987) ("Courts . . . do not sit to hear claims of factual or legal error by an arbitrator as an appellate court does in reviewing decisions of lower courts.").

13. Since Petitioners have not even claimed, let alone proven, valid grounds to vacate the Final Award, the Final Award must be confirmed. *See Hall St. Assocs.*, 552 U.S. at 582 ("Under the terms of § 9, a court 'must' confirm an arbitration award "unless" it is vacated, modified, or corrected 'as prescribed' in §§ 10 and 11."); *Popular Secs., Inc. v. Colón*, 59 F. Supp. 3d 316, 318 (D.P.R. 2014) ("A confirmation proceeding is intended to be summary . . . [and] [c]onfirmation can only be denied if an award has been vacated, corrected, or modified in accordance with the FAA.").

WHEREFORE, UBS respectfully requests that the Court deny Petitioners' Request for Revocation or Modification of Arbitration Award, Dkt. No. 1-1; grant UBS's Cross-Motion to Confirm Arbitration Award, Dkt. No. 14; and enter an order confirming the Final Award.

Dated: May 18, 2017
San Juan, Puerto Rico

Respectfully Submitted,

s/ Roberto C. Quiñones-Rivera
Roberto C. Quiñones-Rivera
(USDC-PR No. 211512)
María C. Cartagena Cancel
(USDC-PR No. 224204)
MCCONNELL VALDÉS LLC
270 Muñoz Rivera Ave.
Hato Rey, PR 00981
Tel: (787) 250-2604
Fax: (787) 759-2631

-and-

Peter J. Macdonald (*pro hac vice*)
Ross E. Firsenbaum (*pro hac vice*)
Adriel I. Cepeda Derieux (*pro hac vice*)
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Tel: (212) 230-8800
Fax: (212) 230-8888

Attorneys for Petitioners UBS Financial Services Inc. and UBS Financial Services Incorporated of Puerto Rico